

## REMARKS

### Objection under 35 U.S.C. §112

In the final Office Action to which this Amendment is responding, the Examiner objected to claims 24 and 25 as adding new matter via the term "additional supplement." The Examiner also objected to claim 25 as being indefinite. In response, Applicant has herein amended both claims 24 and 25 to replace the term "supplement" with the term "nutritional ingredient," the latter term clearly being supported by the original specification in the paragraph beginning on line 14 on page 12. Additionally, Applicant has herein amended claim 25 in accordance with the Examiner's suggestion. As such, claim 25 is no longer indefinite.

Incidentally, the Examiner will note that amendment to claim 24 replacing "processed *Morinda citrifolia*" with "beverage consumption" and the amendment to claim 25 replacing "dietary supplement" with "*Morinda citrifolia* fruit juice" were simply to make the claims refer to their proper antecedent bases in claim 1 as herein amended.

### Rejection under 35 U.S.C. §102

In the final Office Action, the Examiner also rejected claims 9, 27-28. Applicant will not address the rejections to claims 27-28 because the Examiner has, in said Office Action, withdrawn them as being directed towards non-elected subject matter.

With respect to claim 9, the Examiner states that it is anticipated by the Mueller et al. reference. In response, Applicant has herein amended claim 9 to include the phrase "the fruit juice being obtained without drying or powdering the *Morinda citrifolia*." This limitation, supported in the specification at lines 17-20 of page 10, prevents amended claim 9 from being anticipated by

Mueller et al. Mueller et al. discloses a juice whose ingredients were listed on the bottle as "reconstituted noni fruit juice (*from concentrate*), white grape juice, natural flavors, and Flower of Benjamin" (emphasis added). As defined by the popular Internet-based dictionary, Dictionary.com, the definition of "concentrate" is "[a] product that has been concentrated, especially a food that has been reduced in volume or bulk by the removal of liquid[, for example,] pineapple juice concentrate." Therefore, Mueller et al., in teaching a juice derived from noni concentrate, a dried substance, cannot anticipate claim 9 as amended herein. Moreover, Applicant submits that Mueller et al. by specifically indicating that the juice was derived from concentrate, even teaches away from a beverage comprising *Morinda citrifolia* that is not dried or powdered. As amended herein, claim 9 is neither anticipated nor rendered obvious by the Mueller et al. reference.

#### Rejection under 35 U.S.C. §103

In the final Office Action, the Examiner also rejected claims 1, 4-12, and 24-26 as being obvious over Mueller et al. in view of Gagnon. In response, Applicant has amended the corresponding independent claims, claims 1 and 9, to include the additional limitation that the fruit juice is "obtained without drying or powdering the *Morinda citrifolia*." As was discussed above, Mueller et al. does not disclose such a limitation, and even teaches away from such a limitation. Gagnon, an article focusing on the daily intake of liquid herbs, also does not mention the limitation to claims 1 and 9 added herein. Therefore, herein-amended claims 1 and 9 and their corresponding dependent claims (dependent claims having more limitations than the claims they depend on) are neither anticipated nor rendered obvious by the Mueller et al. reference, and the remainder of the Examiner's arguments with respect to §103 are thereby made moot.

Voluntary amendments made herein

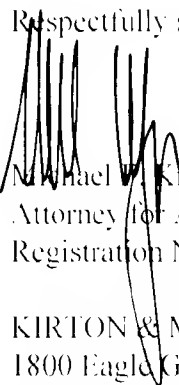
The Examiner will note that Applicant has replaced the terms "processed" and "processing" in the claims with other terms in response to the Examiner's objection that the definition of such terms were unclear. The Examiner will note that none of the amendments made herein add new matter. Other amendments to the claims, unless otherwise explained herein, were made to make the claims refer to their proper antecedent bases.

CONCLUSION

Based on the foregoing, Applicant believes that the claims of the present invention are in condition for allowance and respectfully requests the same. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to initiate a telephone interview with undersigned counsel.

DATED this 1 day of May, 2003.

Respectfully submitted,



Michael W. Kieger  
Attorney for Applicant  
Registration No. 35,232

KIRTON & McCONKIE  
1800 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 321-4814  
Facsimile: (801) 321-4893

JHG  
681535.1